

§ 537.403 Economic development of resources located in Burma.

The term *economic development of resources located in Burma* refers to activities pursuant to a contract the subject of which includes responsibility for the development or exploitation of resources located in Burma, including making or attempting to make those resources accessible or available for exploitation or economic use. Examples include contracts conferring rights to explore for, develop, extract, or refine petroleum, natural gas, or minerals in the ground in Burma; contracts to take over a mining operation in Burma; acquire a forest or agricultural area and exploit the timber or other crops; or acquire land and construct and run a hotel or factory on it. The term *economic development of resources located in Burma* is defined in § 537.301 specifically to exclude contracts for not-for-profit educational, health or other humanitarian programs or activities. See also § 537.204 for the exception that applies to the entry into, performance of, or financing of a contract to sell or purchase goods, services or technology.

§ 537.404 Purchase of shares in economic development projects in Burma.

The purchase of shares, including an equity interest, in the economic development of resources located in Burma, is prohibited when those shares are purchased after the effective date directly or indirectly from the Government of Burma or a nongovernmental entity in Burma, unless purchased pursuant to an agreement entered into prior to May 21, 1997. U.S. persons may purchase debt instruments issued by the Government of Burma or a nongovernmental entity in Burma, directly or indirectly, provided that such instruments are not convertible into equity, and do not provide for participation, including as collateral or security, in royalties, earnings, or profits in the economic development of resources located in Burma.

§ 537.405 Investments in entities involved in economic development projects in Burma.

(a) The purchase of shares in a third-country company that is engaged in

the economic development of resources located in Burma is prohibited by § 537.201 where the company's profits are predominantly derived from the company's economic development of resources located in Burma.

(b) If a U.S. person holds shares in an entity which subsequently engages exclusively or predominantly in the economic development of resources located in Burma or subsequently derives its income exclusively or predominantly from such economic development, the United States person is not required to relinquish its shares, but may not purchase additional shares. Divestment of the shares in such an entity to a foreign person — constituting the facilitation of that foreign person's investment in Burma — is authorized under general license pursuant to § 537.504.

§ 537.406 General supervision and guarantee.

Section 537.201 prohibits the entry by a U.S. person into a contract providing for the general supervision and guarantee of another person's performance of a contract that includes the economic development of resources located in Burma, if the U.S. person's contract is entered into on or after the effective date, unless undertaken pursuant to, or in exercise of rights under, a pre-effective date agreement. For the purposes of § 537.201, only the entry into contracts for supervision and guarantee at the top level of project management, such as entry into a contract with a development project's sponsor or owner to become a prime contractor or general manager for a development project, will be considered new investment in Burma. By contrast, subcontracts to provide goods, services, or technology to a prime contractor or general manager of a development project are exempt from the prohibitions of this part pursuant to § 537.204 unless:

(a) The functional scope of the subcontractor's obligations is substantially similar to that of a prime contractor's or general manager's obligations; or

(b) The consideration for such subcontracts includes a share of ownership in, or participation in the royalties,